FILED
FEB 28 1946
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 762

ROY E. CRUMMER, HEWEN A. LASSETER, COURTNEY S. TURNER, WILLIAM J. MEREDITH, JAMES G. MARTIN, VERNON T. McCOMBS, MARJORIE SCHOCKLEY, HERBERT MOON, ROY F. PRESTON, CARL A. MORAWITZ, R. E. CRUMMER & COMPANY, A CORPORATION, AND THE CRUMMER COMPANY, A CORPORATION,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY FOR PETITIONERS.

R. B. CALDWELL,
FRANCIS X. BUSCH,
E. R. SLOAN,
THOMAS M. LILLARD,
Attorneys for petitioners, R. E. Crummer & Company, Roy E. Crummer, William J. Meredith, Courtney S. Turner and Hewen A. Lasseter.

W. F. LILLESTON,
HARRY C. CASTOR,
JOSEPH G. CAREY,
Attorneys for petitioners, James G. Martin, Vernon T. McCombs, Carl A. Morawitz, Roy F. Preston, Herbert Moon and The Crummer Company.

GLENN PORTER,
ARTHUR W. SKAER,
Attorneys for petitioner, Marjorie Schockley.

PRESTON BOYDEN,
JAMES J. MAGNER,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 762

ROY E. CRUMMER, HEWEN A. LASSETER, COURTNEY S. TURNER, WILLIAM J. MEREDITH, JAMES G. MARTIN, VERNON T. McCOMBS, MARJORIE SCHOCKLEY, HERBERT MOON, ROY F. PRESTON, CARL A. MORAWITZ, R. E. CRUMMER & COMPANY, A CORPORATION, AND THE CRUMMER COMPANY, A CORPORATION,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

REPLY FOR PETITIONERS.

The importance of this case to petitioners makes it desirable that a short reply be filed to respondent's brief in opposition.

Apropos of respondent's footnote (Resp. Br. p. 2), conceding as applicable the three-month period for certiorari allowed by Sec. 8(a) of the Act of February 13, 1925 as amended (28 U. S. C. 350), the case of *Nye* v. *United States,* 313 U. S. 33, 44, so decides.

Respondent's argument in opposition is inadvertently incomplete and misleading with respect to the point separately raised and argued on behalf of The Crummer Company. To justify the action of the Circuit Court of Ap-

peals in reversing the District Court in respect of Count 8, the brief in opposition refers to the fact that the indictment alleged the Company's incorporation on November 10, 1942, and that the letter involved in Count 8 was mailed on December 17, 1942. (Resp. Br. p. 23.) The allegation, standing *alone,* as to the date of The Crummer Company's incorporation, was not sufficient to bring that Company into the case. To do that, the indictment alleged (Ind. par. 4; R. 4) that it was part of the alleged scheme "that said defendants *in the name of The Crummer Company,* would and did, on or about *January 1, 1943,* and thereafter, continue to consummate all of the pending and incompleted negotiations, dealings, business, affairs and activities theretofore carried on by said defendants in the name of R. E. Crummer & Company." (Italics supplied.) The Crummer Company, therefore, is *not* alleged to have entered the picture, even in name, until "on or about January 1, 1943, and thereafter." The letter involved in Count 8 is alleged to have been mailed previously on December 17, 1942. The *only* count in the indictment where a mailing occurred *after* The Crummer Company entered the transaction is Count 9. Respondent suggests (Resp. Br. fn. p. 23) that since a reviewing court may consider a plain error prejudicial to an accused individual, even though it shall not have been assigned as error, "no reason appears" to respondent why the Court should not exercise the same prerogative for the benefit of the Government. The answer is obvious. The situations are *not* the same. In the case at bar, *after* errors assigned, by *express admission* of the Government contained in its brief filed in the Circuit Court of Appeals, the ruling of the District Court in respect of Count 8 of the indictment was "not challenged" by the Government. This constituted a waiver. The disposition of the case as to The Crummer Company by the Circuit Court of Appeals, therefore, was and is not

consistent with the issue as presented to it in respect of said petitioner.

Respondent has endeavored to clarify and justify the ambiguities of the indictment. In some instances this is at the expense of its text.[1, 2, 3] In others it is by advancing arguments in justification which are inappropriate to the support of an indictment in a criminal case.[4] Not stopping to recount them here, illustrations of some are

---

1. Respondent says (Resp. Br., p. 8) that petitioners falsely represented "that Panama City could not pay the original coupon rate of 6% without impairing its refunding program," thus making it appear that respondents made unqualified and categorical statements in that respect. Actually the text of the indictment is that "*if all holders* of Panama City original bonds *had demanded the original coupon rate of 6%*, that the program would never have been able to operate, as the said City could not have possibly produced sufficient funds to meet this obligation." (Italics ours.) (R. 7-8.) It is to be observed that the final refunding rate agreed upon was 4%.

2. Respondent's statement (Resp. Br., p. 8) that petitioners were able to secure control "over a large number of Panama City bonds" by requesting that they be sent in for an interest endorsement is wholly unjustified. The indictment does not claim that *any* bonds were ever sent in to defendants. (R. 10.) Furthermore, in the Circuit Court of Appeals the Government conceded that this case is not concerned with the principal of the bonds. (R. 217.)

3. Respondent's statement (Resp. Br., p. 9) that defendants collected large amounts of refunding bonds in Cause No. 26, citing pars. 6, 9, 11-B, 11-C, 11-D and 11-E (R. 5, 6, 7, 8-9), is not supported by the record references. It is impossible for defendants to tell from this indictment whether one or two cases are involved.

4. To our point that no facts are stated in the indictment to support the conclusion that temporary representation agreements and powers of attorney were "fraudulently obtained" it is answered that such is *implied* in the allegations of the indictment (Resp. Br., p. 17); to the point that it is not claimed that petitioners did not have any interest in the coupons merged in the judgment, it is said that this is *negatively* alleged. (Resp. Br., p. 16.) The proposition that matters can be either *implied* or *negatively* alleged in criminal indictments is wholly foreign to the law.

set out in the margin. Our point is—that by thus restating and regrouping its constituent averments, the indictment is here given a specificity which it does not in fact possess. In resolving the opposing points of view, petitioners invite examination of the indictment.

Respondent's statement of the basic theory on which this indictment is drawn shows, that when it is required to be clearly stated, it is one which is completely refuted by the indictment itself. (Resp. Br. p. 12.)[5]

Respondent complains of the purchase, during 1937-1940 from Panama City bondholders, at prices which were the equivalent of 33% and 50% of par respectively, of Panama City defaulted interest coupons, some of which had been involved in judgment and *all* of whose bonds had been in default from seven to ten years at the times of purchase. The theory is that even though the original purchase of the coupons was at a price, which is not claimed to be inadequate or improvident at the time, respondent claims the circumstances surrounding the purchase made it rescindable in equity at the option of the bondholder; therefore the bondholders were deprived of the opportunity to collect the full amount of the coupons and the defendants in fact converted the same to their use. Various general allegations, contained in the indictment, with reference to the so-called domination of corporations, employment of a sales force, distribution of circulars, conversion of funds (the

5. "A careful consideration of the instant indictment as a whole discloses that the scheme charged was for petitioners to obtain control, as purported beneficiaries, of Panama City past due bonds and interest claims from the public holders thereof, thereafter to acquire ownership of the bondholders' interest claims for substantially less than their face amount by means of false representations and nondisclosures of facts, and, finally, after merging the bonds and interest claims into judgment and collecting them in full from the city, to convert fraudulently to petitioner's own use and benefit a substantial portion of the ultimate recovery."

latter arrived at by treating the purchase as ineffective) are subordinate, if not indeed irrelevant, to this basic theory of culpability. They are diversionary allegations designed to distract attention from a fundamental weakness in the indictment's theory of liability.

The *record* shows that on June 12, 1942, R. E. Crummer & Co., one of the corporate defendants, sent a letter "To the Holders of the City of Panama City, Florida, Bonds." (R. 30-35.) This letter reviewed the circumstances leading up to the refunding arrangements which were then submitted to the bondholders and which were outlined in the letter. The Court's attention is called to the fact that this letter *specifically* directed the attention of the bondholders to four salient facts: *first*, that the Company had theretofore purchased defaulted interest coupons and interest claims at prices which were fair and proper under the circumstances prevailing at the moment of purchase; *second*, that commercial conditions had since improved, and that the refunding of the City's debt was about to be then concluded under unexpectedly favorable circumstances; *third*, that the Company stood to realize a substantially higher recovery value on the coupons which it had purchased than it originally anticipated; *fourth, that any bondholder who wished could have his coupons back at the price previously paid to the Company.* (R. 34.)

Petitioners submit that the foregoing offer to Panama City bondholders, contained in the letter of June 12, 1942, fully set forth in this indictment, exculpated R. E. Crummer & Co., its officers and employees, of and from *any* form of civil or criminal liability. It negatives respondent's theory that this transaction was a scheme or artifice because it *disclaims* any intent or desire to collect the coupons in full, against the will of the bondholder who had sold them.

In an effort to dissipate the indisputable force of this letter respondent borrows a phrase from another case (wholly unlike the one at bar) and infers—without any specific basis therefor set forth in the indictment (Resp. Br. p. 19)—that the proof *may* show that the letter was intended to "parry a charge of fraud." Such a letter did not merely "parry" a charge—it completely *extinguished* any charge of fraud, civil or criminal. Is it not true that under this letter the final choice was left to the bondholder? If, as respondent argues in its hypothesis (Resp. Br. p. 12), the Company collected the coupon in full from the City, it was only with the acquiescence of the bondholder and after an opportunity to reacquire his coupons. What more could or should have been done? Nor can the indictment be stretched to infer that this was a "lulling" letter, as is sometimes argued in mail fraud cases. Quite to the contrary, this was an *arousing* offer. It was *arousing* because it put the bondholder on notice that his coupons were again worth par. It *specifically* advised the bondholder that the defendant Company expected to collect the coupons with profit to the Company. Since it offered the bondholder that if he wished he might have his coupons back at the price previously paid, there can be no fraud, civil or criminal.

The letter of June 12, 1942, obviously was before the Grand Jury when this indictment was drawn. It may be taken for granted that if this letter had not in fact been circulated to the bondholders, or if this offer had not in fact been made, this indictment would carry allegations to that effect. There would be no need for the *innuendo* contained in the brief in opposition that the proof *might* show something in derogation of this letter.

Respondent has not undertaken to defend here the philosophy urged so successfully in the Circuit Court of

Appeals, to the effect that in indictments under the Mail Fraud Statute an accused need not be informed in respect of the scheme or artifice to defraud with the same particularity as with respect to the use of the mails.

Petitioners suggest that this false philosophy is being employed to aid or support an indictment drawn in vague and general terms in order to mask a fundamental weakness in its conception of liability.

Respectfully submitted,

R. B. Caldwell,
Francis X. Busch,
E. R. Sloan,
Thomas M. Lillard,
Attorneys for petitioners, R. E. Crummer & Company, Roy E. Crummer, William J. Meredith, Courtney S. Turner and Hewen A. Lasseter.

W. F. Lilleston,
Harry C. Castor,
Joseph G. Carey,
Attorneys for petitioners, James G. Martin, Vernon T. McCombs, Carl A. Morawitz, Roy F. Preston, Herbert Moon and The Crummer Company.

Glenn Porter,
Arthur W. Skaer,
Attorneys for petitioner, Marjorie Schockley.

Preston Boyden,
James J. Magner,
Of Counsel.